

March 14, 2003

BY HAND

Mr. Alfred W. Gross
Deputy Receiver for Reciprocal of
America and The Reciprocal Group
c/o Commissioner of Insurance
Bureau of Insurance
State Corporation Commission
Tyler Building
1300 E. Main Street
Richmond, Virginia 23219

**RE: Commonwealth of Virginia, ex rel. State Corporation Commission v.
Reciprocal of America, The Reciprocal Group, and Jody M. Wagner,
Treasurer of Virginia, Case No. INS-2003-00024 (Va. State Corp. Comm'n 2003)**

**RENEWED NOTICE OF APPEAL, RENEWED CLAIM, RENEWED REQUEST FOR
IMMEDIATE STAY OF FIRST DIRECTIVE AS TO PAYMENTS TO ROA
INSURANCE POLICY CLAIMANTS, AND RENEWED REQUEST FOR RELIEF
FROM THIRD DIRECTIVE**

Dear Deputy Receiver Gross:

In your capacity as Deputy Receiver to the State Corporation Commission ("SCC"), which was appointed as the Receiver in the case currently before the SCC styled Commonwealth of Virginia, ex rel. State Corporation Commission v. Reciprocal of America, The Reciprocal Group, and Jody M. Wagner, Treasurer of Virginia, Case No. INS-2003-00024 (Va. State Corp. Comm'n 2003), you have issued three Directives setting forth the substantive standards and

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procedures to be followed by you and your Special Deputy Receiver, Melvin J. Dillon, in the case. We are counsel for three Special Deputy Receivers (“SDRs”) appointed by the Tennessee Commissioner of Commerce and Insurance, Paula A. Flowers, pursuant to consent orders (the “Tennessee Orders”) placing in receivership, and naming Commissioner Flowers as Receiver for, Doctors Insurance Reciprocal (Risk Retention Group) (“DIR”), American National Lawyers Insurance Reciprocal (Risk Retention Group) (“ANLIR”), and The Reciprocal Alliance (Risk Retention Group) (“TRA”) (collectively, “the Reciprocal”).¹ John Knox Walkup is the SDR for DIR; Robert S. Brandt is the SDR for ANLIR; and Michael D. Pearigen is the SDR for TRA.

A. February 28, 2003 Notice of Appeal

On February 28, 2003, without admitting that your Directives are applicable to us or to the Reciprocal, and specifically reserving the right to challenge their applicability to us and to the

¹ See Consent Order Appointing Commissioner as Receiver for Purposes of Rehabilitation; and Injunction, in State of Tennessee, ex rel., Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee v. Doctors Insurance Reciprocal (Risk Retention Group) (Chancery Ct., 20th Judicial District, Davidson County, Tennessee) (Jan. 31, 2003) (Exhibit 11); Consent Order Appointing Commissioner as Receiver for Purposes of Rehabilitation; and Injunction, in State of Tennessee, ex rel., Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee v. American National Lawyers Insurance Reciprocal (Risk Retention Group) (Chancery Ct., 20th Judicial District, Davidson County, Tennessee) (Jan. 31, 2003) (Exhibit 12); and Consent Order Appointing Commissioner as Receiver for Purposes of Rehabilitation; and Injunction, in State of Tennessee, ex rel., Paula A. Flowers, Commissioner of Commerce and Insurance for the State of Tennessee v. The Reciprocal Alliance (Risk Retention Group) (Chancery Ct., 20th Judicial District, Davidson County, Tennessee) (Jan. 31, 2003) (Exhibit 13) (collectively, the “Tennessee Orders”). Note that Exhibits 1-10 to the SDRs’ February 28, 2003 Notice of Appeal are incorporated herein by reference and additional Exhibits accompanying this Renewed Notice of Appeal begin with Exhibit 11.

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Reciprocals, we filed with you, addressed to SDR Dillon, a Notice of Appeal,² as provided in the “Receivership Appeal Procedure” contained in your Third Directive,³ regarding certain aspects of your First Directive⁴ and Third Directive.

In our February 28 Notice of Appeal, we asked for an expedited review of our appeal to assist us – and you – in protecting the policyholders of four interrelated insurers – DIR, ANLIR, TRA, and Reciprocal of America (“ROA”) – from the irreparable harm that could be caused by actions taken with regard to the assets of ROA and TRG. As part of our request for expedited review, we asked you for full and complete access to all books and records of each of the Reciprocals and to all employees of The Reciprocal Group (“TRG”), the interrelated management company that managed all of the insurance business of ROA and the three Reciprocals, who have or had any responsibility for work done for any of the Reciprocals. This access is essential to our obtaining the information necessary for us to perform our fiduciary duties as SDRs pursuant to the Tennessee Orders and statutes and to understand better the relationship among these four insurers and their management company and, thus, the respective rights of the various policyholders.

² Notice of Appeal, Claim, Request for Immediate Stay of First Directive as to Payments to ROA Insurance Policy Claimants, and Request for Relief from Third Directive (Feb. 28, 2003) (“Notice of Appeal”), in Commonwealth v. ROA, et al., Case No. INS-2003-00024 (Va. State Corp. Comm’n 2003).

³ Third Directive of Deputy Receiver Adopting Receivership Appeal Procedure, in Commonwealth v. ROA, et al., Case No. INS-2003-00024 (Va. State Corp. Comm’n, effective Jan. 29, 2003) (the “Third Directive”).

⁴ First Directive of Deputy Receiver Continuing Insurance Policy Payments and Imposing Suspension and Moratorium on Other Claim Payments, in Commonwealth v. ROA, et al., Case No. INS-2003-00024 (Va. State Corp. Comm’n, effective Jan. 29, 2003) (the “First Directive”).

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It has been fourteen (14) days since we filed our Notice of Appeal, and we have not yet heard from you. The importance and urgency of obtaining the relief requested in our February 28 Notice of Appeal is reflected in correspondence to you from the President of the Medical Society of Virginia and the President of the Virginia Bar Association. Both organizations represent thousands of the Reciprocal's insureds, and both correctly view the relief sought in our February 28 Notice of Appeal as essential to protection of the interests of thousands of our Virginia policyholders. Copies of the letters from Dr. Konerding and Mr. Thomas are attached as Exhibits 14 and 15.

We believe that your refusal to expedite your review of and decision on our February 28, 2003 Notice of Appeal can be appealed at this time to the SCC. In lieu of doing so, however, we are respectfully renewing our request to you for an expedited review of and decision on our February 28 Notice of Appeal. We incorporate herein in its entirety our February 28, 2003 Notice of Appeal, including, in their entirety, Exhibits 1-10 to that Notice of Appeal.

If this obviously urgent matter does not receive extremely prompt action on your part, we will take such continued failure to respond to the urgent requests contained in our February 28 Notice of Appeal and renewed herein as a denial of those requests, and it is our intention to bring that denial before the SCC for immediate consideration.

B. Renewed Request for Expedited Review of, and Decision on, February 28, 2003 Notice of Appeal

Our most immediate need is for full and complete access to the books and records of each of the Reciprocal and to all employees of TRG who in any way are or were responsible for managing the affairs of any of the Reciprocal. Another increasingly serious concern is the past, current, and

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continuing dissipation of assets of ROA and TRG before a final determination can be made by both you and the Reciprocal about whether ROA, TRG and the Reciprocal are in fact a single insurance business enterprise. If, as we maintain, they are a single insurance business enterprise, then the continued dissipation of assets of ROA and TRG will cause immediate and irreparable harm to the policyholders of each of the Reciprocal, including Virginia insureds and citizens you are obligated to protect and should have treated from the outset the same as policyholders of ROA. It does not appear that you have attempted to ascertain whether ROA and the Reciprocal comprised a single insurance business enterprise entitling insureds of the Reciprocal to similar rights to ROA estate monies. Your failure to conduct an expedited review of and issue a decision on our Notice of Appeal not only is causing immediate and irreparable harm to the policyholders of each of the Reciprocal, it also constitutes an obstruction of and failure to recognize the Tennessee Orders, which are valid judgments of a Tennessee court entitled to full faith and credit and comity in Virginia.

1. Access to Books and Records

In a letter to you dated February 21, 2003 (Exhibit 16), Commissioner Flowers, acting as Receiver, asked you for immediate access to the books and records of each of the Reciprocal that are under your control or the control of SDR Dillon, ROA and/or TRG. In a letter dated February 26, 2003 (Exhibit 17), you refused that access. You went to great lengths in your February 26 letter to describe how your staff is trying to identify which books and records are those of the Reciprocal and is copying those documents and forwarding them to us. Unfortunately, while we appreciate your assistance in this respect, your unilaterally reviewing and copying the records you have decided are those of the Reciprocal is not what was requested, needed, or required by statute or court order.

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We have two major difficulties with the limited access you are giving us to the books and records of the Reciprocal. First, you and SDR Dillon are not the Receivers for the Reciprocal. Thus, unless ROA, TRG and the Reciprocal are in fact a single insurance business enterprise, you have no primary rights to the books and records of the Reciprocal. Either all five entities are a single insurance business enterprise (as we maintain)⁵, in which case you do have a right to shared access to the books and records of all five entities – as do we, pursuant to the Tennessee Orders and statutes – or they are separate entities. In the latter case, you have no right to any access to the books and records of the Reciprocal without our consent and without abiding by applicable rules and law.

You have not yet indicated to us that you believe that all five entities are and were a single insurance business enterprise. Thus, by going through the records of all five entities and copying those that you believe are books and records of the Reciprocal, you are in effect conducting unfettered and unsupervised discovery of the books and records of the Reciprocal, three entities for which you are not

⁵ Pursuant to a “Management and Insurance Services Agreement” with each of the three Reciprocal, TRG managed all of the insurance business of those three entities. See Exhibits 4A, 4B and 4C to our February 28, 2003 Notice of Appeal. A similar agreement existed between ROA and TRG. See Verified Application for Final Order Appointing Receiver and for Permanent Injunctive Relief at 4, in Commonwealth v. ROA et al., Cause No. CH03-135 (Richmond Cir. Ct., filed Feb. 3, 2003) (the “Application”). Thus, TRG managed all the insurance business of ROA and all three Reciprocal. You alleged in your Application to the Circuit Court for the City of Richmond, and that Court found, that ROA and TRG were a “single insurance business enterprise.” See Application at 3; and Final Order Appointing Receiver for Rehabilitation or Liquidation at 2, in Commonwealth v. ROA et al., Case No. CH03-135 (Richmond Cir. Ct., signed Jan. 29, 2003) (the “Richmond Circuit Court Order”). For the same reasons, at a minimum, each of the Reciprocal and TRG also are a separate single insurance business enterprise (i.e., DIR-TRG, ANLIR-TRG, and TRA-TRG). We therefore need and have a right to the same access you and your staff have had to all of TRG’s books and records to determine which ones are indeed those of the Reciprocal. You do not have the right to make that determination for us any more than we would have that right to make that determination for you and SDR Dillon.

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responsible as Deputy Receiver and for which we have fiduciary responsibilities under the Tennessee Orders and Tennessee statutes. We must insist that, without our consent and without abiding by applicable rules and law, you immediately stop keeping copies of the books and records of the Reciprocal you send to us except as such retention is required to perform your duties to the policyholders of the Reciprocal.

Second, you and your staff, with no input from us, are determining what books and records you believe are those of the Reciprocal. We believe that the books and records of the Reciprocal, ROA and TRG are commingled, which is evidenced by the fact that your staff cannot merely send us books and records that clearly are those of the Reciprocal, but rather feel compelled to cull through all the records to determine which ones they feel are those of the Reciprocal. This, of course, is further evidence that ROA, TRG, and the Reciprocal are and were a single insurance business enterprise. In this regard, we also request that you immediately cease and desist the destruction of any records of the Reciprocal, ROA or TRG, including the purging or deletion of electronically stored data. Finally, we request a listing of all Reciprocal, ROA and TRG documents that have been destroyed to date, including discarded disks, hard drives, or electronic files, and any indices reflecting these documents, as well as a listing of all documents and information that have been removed while copying the records of the Reciprocal.

Based on the above, we reiterate the request in our February 28, 2003 Notice of Appeal that we be given immediate access to all books and records over which TRG has or had control so that, in order to prevent policyholders of the Reciprocal from continuing to suffer immediate and irreparable harm,

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we can perform our fiduciary duties pursuant to the Tennessee Orders and determine which of those books and records are those of the Reciprocals.

2. Need for Immediate and Unrestricted Access to TRG Employees

As noted above, TRG managed all the insurance business of ROA and the three Reciprocals. We believe that many TRG employees performed work for more than one entity. We therefore reiterate our February 28, 2003 request for immediate, unrestricted access to all current TRG employees so that we can determine if those employees did work for any or all of the Reciprocals. We also request a list of all former employees who worked for TRG at any time from 1990 until the present. According to recent newspaper accounts, during or about the week of February 24, 2003, SDR Dillon dismissed a significant number of TRG employees who had certain responsibilities regarding the Reciprocals. We request that you provide us immediately with the name and last known home address and telephone number for each of these former employees, and that you instruct SDR Dillon to refrain from restricting or obstructing our access to these former TRG employees, including, but not limited to, enforcing or threatening to enforce any restrictions that SDR Dillon or persons acting pursuant to his authorization may have placed upon these former employees as part of a termination process or otherwise.

Based on the above, we reiterate the request in our February 28, 2003 Notice of Appeal for immediate and unrestricted access to all TRG employees, consisting of access to meet and talk with all current employees and access to the names and last known home address and telephone number of former employees, so that, in order to prevent policyholders of the Reciprocals from continuing to suffer immediate and irreparable harm, we can fulfill our fiduciary duties under the Tennessee Orders and Tennessee law.

Reed Smith

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3. Stay of Dissipation of ROA and TRG Assets

We submit that ROA, TRG, and the Reciprocal comprised and carried on the business of insurance as a single insurance business enterprise. Because we have been denied full access to the books and records of each of the Reciprocal and to the employees of TRG, we have been unable to obtain the information necessary for us to fulfill our fiduciary duties and determine whether we are correct. At the same time, you announced in your First Directive that you intend to process, defend and pay claims against policyholders only of ROA. As a result, assets of ROA and TRG are being dissipated, including premiums paid by policyholders of the Reciprocal for reinsurance from ROA, which we believe was to have been provided on a “first-dollar reinsurance” basis. If, as we believe, ROA, TRG, and the Reciprocal were and are a single insurance business enterprise, then you owe the same duties to the policyholders of each of the Reciprocal as to policyholders of ROA. The policyholders of the Reciprocal therefore should be treated by you in the same manner as ROA policyholders. Your dissipation of the assets of ROA and TRG in favor of policyholders only of ROA is causing immediate and irreparable harm to policyholders of each of the Reciprocal, is a breach of the receivership duties entrusted to you by the SCC, is discrimination prohibited by the Commerce Clause of the Constitution of the United States, and is a violation of the rights to due process and equal protection guaranteed by the Fourteenth Amendment and the Constitution of Virginia.

We have not been given access to the information necessary to fully confirm that ROA, TRG and the Reciprocal are in fact a single insurance business enterprise. Thus, in order to avoid further immediate and irreparable harm to the policyholders of each of the Reciprocal, and to avoid the potential that you are breaching your duties to policyholders of these three entities, we request that you

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either stay, or seek a SCC-ordered or court-ordered stay, of the payment of all claims under ROA policies until such time as it can be finally determined whether ROA, TRG and the Reciprocals are, in fact, a single insurance business enterprise requiring uniform treatment of certain claimants with regard to the ROA and TRG estate.

4. Failure to Grant Full Faith and Credit or Comity to Valid Tennessee Court Orders

The Tennessee Orders are valid orders issued by a Tennessee court with jurisdiction to place DIR, ANLIR and TRA in receivership, and therefore are entitled to full faith and credit and/or comity in Virginia. Those Orders require all persons to cooperate with the Receivers appointed for the Reciprocals, and with the Receivers' designees, and among other things, to provide full and complete access to the books and records of the Reciprocals, and not to dissipate their assets. It also requires all personnel to cooperate with the Receivers and their designees. The failure to provide us with full and complete access to the books and records of the Reciprocals and to the employees of TRG is in complete contravention of, and constitutes an obstruction to the enforcement of, three valid Tennessee Orders. In addition, if you should refuse to grant or seek the stay requested in Paragraph 3 above, that refusal also would be in contravention of those valid Tennessee Orders and also would constitute an obstruction to the enforcement of those Orders.

The Tennessee Orders are similar to the Richmond Circuit Court Order purporting to give you certain powers. If you fail to accord full faith and credit and/or comity to the Tennessee Orders, that could well affect negatively the recognition given the Richmond Circuit Court Order pursuant to which you are conducting the receivership.

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Based on the above, we therefore request that you recognize these valid Tennessee Orders, either by giving them full faith and credit or by recognizing them through comity, and grant us full and complete access to the books and records of DIR, ANLIR and TRA and to the employees of TRG as we requested in our February 28, 2003 Notice of Appeal and in Paragraphs 1 and 2 above, and grant or seek the stay of the payment of all claims under ROA policies we have requested in Paragraph 3 above.

Respectfully submitted,

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